

[Cite as *State v. Money*, 2010-Ohio-5753.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CLARK COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 09-CA-118
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-675A
v.	:	
	:	
BILL MONEY	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 24th day of November, 2010.

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BROGAN, J.

{¶ 1} Bill Money appeals from his conviction in Clark County Common Pleas Court of trafficking in cocaine with a specification of forfeiture. After reviewing a pre-sentence investigation report, the trial court imposed an eight-year sentence upon Money, the maximum permitted for the second degree felony.

{¶ 2} In his first assignment of error, Money contends the trial court abused its discretion in not imposing the shortest prison sentence authorized by R.C. 2929.14(A)(1) and (B). In his second assignment, he argues that the eight-year sentence imposed upon him was contrary to law. Money notes that he has no prior criminal history, the crime he committed was not one of violence, and there was no indication he would re-offend. He also notes that the prosecutor told the court that he was cooperative with authorities and was honest and straightforward in his dealings with the State of Ohio.

{¶ 3} The State for its part argues that the eight-year sentence was within the statutory limits for a second-degree felony and there was no evidence the trial court abused its discretion in imposing the sentence.

{¶ 4} In *State v. Kalish*, 120 Ohio St.3d 23, 2008-Ohio-4912, the Ohio Supreme Court attempted to resolve the standard for reviewing trial court sentencing decisions after *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-256. In a fractured decision authored by Justice O'Connor, the court held that appellate courts must adopt a two-step approach. They must examine the sentencing court's compliance with all applicable rules and statutes to determine whether the sentence is clearly and convincingly contrary to law. The court noted that a sentence outside the permissible statutory range is clearly and convincingly contrary to law. The court stated, if the first prong is satisfied, the trial court decision shall be reviewed under the abuse of discretion standard using R.C. 2929.11 and 2929.12 as guides in fashioning an appropriate sentence.

{¶ 5} In a separate concurrence, Judge Willamowski stated that he believed

R.C. 2953.08(G)(2) which governs appellate review of trial court sentencing decisions applied only to R.C. 2929.11 and not to R.C. 2929.12 except insofar as the trial court actually considered the sentencing factors (B) through (D) of R.C. 2929.12.

{¶ 6} Our review standard was further complicated by the Supreme Court opinion in *State v. Mathis*, 109 Ohio St.3d 54, 2006-Ohio-855, where the Court held that trial courts are no longer required to make findings or give their reasons for imposing maximum, consecutive, or more than minimum sentences.

{¶ 7} Money was originally indicted for four counts of trafficking in drugs. Each count carried a specification that the offenses were committed in the vicinity of a school. The drug involved was powder cocaine. Money was indicted along with a co-defendant, John Whitt. On October 29, 2010, this court upheld Whitt's eight-year sentence upon his conviction for one count of trafficking in powder cocaine in an amount exceeding 100 grams, a second degree felony. See *State v. John Whitt*, Clark App. No. 2010-CA-03, 2010-Ohio-5291.

{¶ 8} The facts surrounding Whitt's conviction and the role played by Bill Money and his wife, Barbara, are set out in that opinion. We rejected Whitt's claim that the trial court had abused its discretion in imposing the maximum eight-year sentence upon Whitt. While we noted Whitt was a first-time offender, we also noted the conduct prompting the indictment involved several drug transactions with the Moneys between March 20 and April 13, 2009.

{¶ 9} In order to reverse the trial court's sentence upon an abuse of discretion standard, the sentence must be unreasonable as a matter of law. While it is frustrating not to have a trial court explain the sentence imposed, we assume the

trial court considered the appropriate sentencing factors. Money does not deny he was involved in multiple drug transactions with a substantial amount of money involved. The trial court presumably imposed the maximum sentence upon Money to deter others from engaging in similar conduct. The trial court did not abuse its discretion in imposing the maximum sentence upon him. Money's assignments of error are Overruled.

{¶ 10} The judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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Hon. Douglas M. Rastatter